

N.D.A.G. Letter to Murphy (June 30, 1986)

June 30, 1986

Honorable Jack Murphy
House of Representatives
36th District
Killdeer, ND 58640

Dear Representative Murphy:

Thank you for your letter of June 9, 1986.

First of all, I do not believe that the aerial applicator operating permit on Weydahl Airport, Killdeer, North Dakota, adopted by the Dunn County Airport Authority is a zoning regulation. Airport zoning regulations are those which divide airport hazard areas into zones and, within such zones, specify the land uses permitted. They regulate and restrict such things as height to which structures and trees may be erected or allowed to grow. See N.D.C.C. §2-04-03. Therefore, the procedures for adopting zoning regulations do not apply.

N.D.C.C. §2-06-12 allows airport authorities to adopt reasonable resolutions, rules, regulations, and orders deemed necessary for the management, government, and use of any airport or air navigation facility owned by it or under its control. The resolution, rule, regulation, or order must not be contrary to federal law.

N.D.C.C. §2-06-07 prescribes the general powers of an airport authority. These powers include:

2-06-07. GENERAL POWERS OF AN AUTHORITY. An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter including the power to certify, annually to the governing bodies creating it, the amount of tax to be levied by said governing bodies for airport purposes including, but not limited to, the power:

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3. To plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities. . . . (Emphasis supplied.)

4. To establish comprehensive airport zoning regulations in accordance with the laws of this state. . . .

Adopting an aerial applicator operating permit seems to be consistent with the authority granted in N.D.C.C. § 2-06-07(3).

Although you do not state it in your letter, it appears that the Dunn County Airport Authority has already adopted the use of the aerial applicator operating permit. The notice in the June 4, 1986, Dunn County Herald seems to provide the results of the meeting of the Dunn County Airport Authority which adopted the aerial applicator operating permit and something called the operations manual for Weydahl Field.

N.D.C.C. §2-06-06 provides that the powers of each airport authority shall be vested in the commissioners. The majority of the commissioners of an authority constitutes a quorum for the purpose of conducting the business of the authority. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present. Therefore, the airport authority could adopt the aerial applicator operating permit without all members being present, providing that a majority of the commissioners were present at the meeting and that a majority of those present voted for adopting the permit.

As noted above, the publication in the Dunn County Herald does not seem to be a notice publication, but rather, a publication of the results of a meeting of the Dunn County Airport Authority. However, N.D.C.C. §44-04-20 requires that public notice be given in advance of all meetings governed by N.D.C.C. §44-04-19. N.D.C.C. §44-04-19 basically includes, as open governmental meetings, the meetings of all public or governmental bodies of the state or any political subdivision of the state, or any organizations or agencies supported in whole or in part by public funds. Notice must contain the date, time, and location of the meeting and, where practicable, the topics to be considered. However the lack of an agenda in the notice, or a departure or an addition to the agenda at a meeting, does not affect the validity of the meeting or the actions taken at the meeting. The public body's presiding officer has the responsibility of assuring that full notice is given at the same time as the public body's members are notified and that this notice is available to anyone requesting such information. In the event of emergency or special meetings of a public body, the person calling the meeting must notify representatives in the news media, if any, located where the meeting is to be held, and which have been requested to be so notified, of the time, place, and date of the emergency meeting, and topics to be considered, at the same time as the public body's members are notified. See N.D.C.C. §44-04-20.

In conclusion, if a meeting of the Dunn County Airport Authority was properly called pursuant to the provisions of N.D.C.C. §44-04-20, a majority of the commissioners showed up and voted on the issue of the aerial applicator operating permit, and a majority of those present approved the permit, the permit is valid. As noted above, if proper notice of the meeting has not been given, the public body's presiding officer is responsible for not giving proper public notice.

Sincerely,

Nicholas J. Spaeth

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